

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FREDDY CHUCHUCA, LUIS DARIO  
GUARTAN, ADRIAN GUZMAN AND  
HERLINDO SORIANO DE LA ROSA, ON  
BEHALF OF THEMSELVES AND ALL  
OTHER PERSONS SIMILARLY  
SITUATED,

Plaintiffs,

v.

FITZCON CONSTRUCTION G.C. INC.,  
FITZCON CONSTRUCTION/REN CORP.,  
ESCO HIRF CO. INC., PUB  
CONSTRUCTION/REN INC. D/B/A PUB  
CONSTRUCTION, RONAN  
FITZPATRICK, CORNELIUS  
O’SULLIVAN, AND JOHN DOES #1-10,

Defendants.

Index No. 20-cv-2178 (RA) (JLC)

Civil Action

**THE FITZCON PARTIES’ RESPONSE TO  
PLAINTIFFS’ RULE 56.1  
COUNTERSTATEMENT OF  
UNDISPUTED FACTS**

Defendants Fitzcon Construction/Ren Corp. (“Fitzcon”), Ronan Fitzpatrick and Cornelius O’Sullivan (collectively, the “Fitzcon Parties”), by and through their attorneys, Cole Schotz P.C., pursuant to Local Civil Rule 56.1, hereby submit the following Response to Counterstatement of Undisputed Facts submitted by the Plaintiffs in this litigation (collectively, “Plaintiffs”).<sup>1</sup>

8. Ronan Fitzpatrick was the only one with authority to write checks for Fitzcon. (Fitzpatrick Tr. 48:15-24)

**Fitzcon Parties’ Response: Undisputed.**

9. Cornelius O’Sullivan hired his nephew, Liam O’Sullivan as a super. (O’Sullivan Tr. 27:4-18)

**Fitzcon Parties’ Response: Undisputed.**

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<sup>1</sup> Citations to the “Fitzpatrick Aff.” or the “O’Sullivan Aff.” refer to the Affidavits of Ronan Fitzpatrick and Cornelius O’Sullivan previously filed with the Fitzcon Parties’ moving papers at Docket Nos. 79 and 80, respectively.

10. Cornelius O’Sullivan’s nephew, Liam O’Sullivan hired and fired foremen and laborers at Cornelius O’Sullivan’s direction. (O’Sullivan Tr. 27:4-28:5; Bermejo Tr. 84:23-85:15)

**Fitzcon Parties’ Response: Disputed and denied. Plaintiffs mischaracterize the cited testimony, which instead merely reflects that Liam O’Sullivan mostly hired foremen for Fitzcon’s projects, and only occasionally certain laborers. (O’Sullivan Tr.<sup>2</sup> 27:4-28:5; Bermejo Tr.<sup>3</sup> 84:23-85:15.)**

11. Ronan Fitzpatrick and Cornelius O’Sullivan hired employees. (Chuchuca Tr. 64:14-65:8)

**Fitzcon Parties’ Response: Disputed and denied. Plaintiffs misleadingly omit the entirety of Mr. Chuchuca’s testimony on this issue, as he conceded that he was instead allegedly hired by someone else other than Mr. Fitzpatrick or Mr. O’Sullivan whose name he could not recall. (Chuchuca Tr.<sup>4</sup> 65:5-24.) *See also* Fitzpatrick Aff., ¶¶ 5-6; O’Sullivan Aff., ¶¶ 4-5 (establishing that Ronan Fitzpatrick and Cornelius O’Sullivan were not responsible for, and did not supervise, the hiring of laborers).**

12. Cornelius O’Sullivan’s nephew, Liam O’Sullivan set employee pay. (Bermejo Tr. 85:23-86:18)

**Fitzcon Parties’ Response: Disputed and denied. The testimony cited by Plaintiffs does not state that Liam O’Sullivan set any employee’s pay. At most, the cited testimony suggests that Liam O’Sullivan relayed Mr. Bermejo’s starting rate of pay**

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<sup>2</sup> See Deposition Transcript of Cornelius O’Sullivan annexed as Exhibit A to the Declaration of David Stein, Esq. (Dkt. No. 90-1) (the “O’Sullivan Tr.”).

<sup>3</sup> See Deposition Transcript of Bolivar Bermejo annexed as Exhibit D to the Declaration of David Stein, Esq. (Dkt. No. 90-4) (the “Bermejo Tr.”).

<sup>4</sup> See Deposition Transcript of Freddy Chuchuca annexed as Exhibit E to the Declaration of David Stein, Esq. (Dkt. No. 90-5) (the “Chuchuca Tr.”).

to him; however, that is not clear from the testimony and, even if it was, Plaintiffs fail to cite any testimony or other support that Liam O’Sullivan played any role in actually setting that rate of pay in the first place. (Bermejo Tr. 85:23:86:18.)

13. Cornelius O’Sullivan and Cornelius O’Sullivan’s nephew, Liam O’Sullivan, would sometimes summon employees to Fitzcon’s offices to pick up their pay. (Bermejo Tr. 87:19-88:9)

**Fitzcon Parties’ Response:** Denied to the extent Plaintiffs mischaracterize the cited testimony, which instead only states that this allegedly occurred “a couple of times”. (Bermejo Tr. 87:19-88:9.)

14. Cornelius O’Sullivan hired some of the workers, and had them fill out paperwork. (O’Sullivan Tr. 28:6-17, 29:15-23)

**Fitzcon Parties’ Response:** Denied to the extent Plaintiffs mischaracterize the cited testimony, which instead only suggests that Cornelius O’Sullivan hired “one or two” workers “every now and again”. (O’Sullivan Tr. 28:6-9.) *See also* O’Sullivan Aff., ¶¶ 4-5.

15. Ronan Fitzpatrick hired project managers. (O’Sullivan Tr. 42:22-24; Fitzpatrick Tr. 29:6-7)

**Fitzcon Parties’ Response:** Undisputed. *See also* Fitzpatrick Aff., ¶ 5 (confirming that Fitzpatrick was not responsible, and did not supervise, hiring laborers.)

16. The project managers hired the foremen, who supervised the workers. (Fitzpatrick Tr. 28:22-29:7)

**Fitzcon Parties’ Response:** Disputed and denied. Plaintiffs mischaracterize the cited testimony, which instead only states that foremen would supervise the work performed at Fitzcon’s job sites. By contrast, the cited testimony does not say that Fitzcon’s foremen were responsible for overseeing the actual workers, nor that

Fitzcon's project managers hired the foremen. (Fitzpatrick Tr.<sup>5</sup> 28:22-29:7.)

*Compare* Fitzpatrick Tr. 30:3-9.

17. Cornelius O'Sullivan supervised the work of laborers. (Lopez Vazquez Tr. 34:7-35:17; Bermejo Tr. 36:21-25, 39:21-40:12, 89:1-20)

**Fitzcon Parties' Response: Denied to the extent Plaintiffs overstate and mischaracterize the cited testimony, which instead only suggests that Cornelius O'Sullivan is an owner of Fitzcon (which is undisputed), and that he had limited oversight of certain work being performed at certain job sites. (Lopez Vazquez Tr.<sup>6</sup> 34:7-35:17; Bermejo Tr. 36:21-25, 39:21-40:12, 89:1-20.)**

18. Employees would speak to Ronan Fitzpatrick and Cornelius O'Sullivan if they had issues with their pay. (Lopez Vazquez Tr. 67:13-24; 36:12-16)

**Fitzcon Parties' Response: Disputed and denied. Plaintiffs mischaracterize the cited testimony, which, at best, concerns a single individual Lopez Vazquez (and not "employees" generally). In addition, the cited testimony is vague in not articulating the "issues" allegedly presented or whether Ronan Fitzpatrick or Cornelius O'Sullivan took, or were responsible to take, any action in response thereto. (Lopez Vazquez Tr. 67:13-24; 36:12-16.) Further, Lopez Vazquez failed to identify Ronan Fitzpatrick at his deposition as being the same "Ronan" with whom he testified allegedly speaking to about payment issues, who he instead described as a "supervisor at the job site" where Lopez Vasquez worked. (*Id.*, at Tr. 26:8-27:18.)**

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<sup>5</sup> See Deposition Transcript of Ronan Fitzpatrick annexed as Exhibit B to the Declaration of David Stein, Esq. (Dkt. No. 90-2) (the "Fitzpatrick Tr.").

<sup>6</sup> See Deposition Transcript of Mario Lopez Vazquez annexed as Exhibit C to the Declaration of David Stein, Esq. (Dkt. No. 90-3) (the "Lopez Vazquez Tr.").

19. Employees would speak to Cornelius O’Sullivan’s nephew, Liam O’Sullivan if they had issues with their pay, and he would speak with the Fitzcon office. (Bermejo Tr. 94:21-96:5)

**Fitzcon Parties’ Response:** Other than to deny the contention to the extent that the cited testimony, at best, concerns a single individual Bermejo (and not “employees” generally), undisputed. (Bermejo Tr. 94:21-96:5.)

20. Ronan Fitzpatrick and Cornelius O’Sullivan’s nephew, Liam O’Sullivan paid employees. (Lopez Vazquez Tr. 76:8-15)

**Fitzcon Parties’ Response:** Disputed and denied. In addition to the use of the phrase “paid employees” being vague and inarticulate, Lopez Vazquez failed to identify Ronan Fitzpatrick at his deposition as being the same “Ronan” by whom he testified allegedly being paid, and who he instead described as a “supervisor at the job site” where Lopez Vasquez worked. (Lopez Vazquez Tr. 26:8-27:18.)

21. Cornelius O’Sullivan paid employees. (Bermejo Tr. 40:14-22)

**Fitzcon Parties’ Response:** Disputed and denied. The testimony cited by Plaintiffs does not remotely state that Cornelius O’Sullivan allegedly paid employees. (Bermejo Tr. 40:14-22.) As such, this statement should be deemed entirely unsupported as failing to comply with Local Civ. R. 56.1(d) for lack of citation to any actual or purported evidence on the stated issue.

22. Ronan Fitzpatrick directed the work of employees. (Bermejo Tr. 36:8-37:15)

**Fitzcon Parties’ Response:** Disputed and denied. Plaintiffs mischaracterize the cited testimony, which instead confirms that Bermejo, at best, only allegedly spoke with Ronan Fitzpatrick “very little”. In addition, the purported statement, even if true, concerns a single individual Bermejo (and not “employees” generally). (Bermejo Tr. 36:8-37:15.)

23. Cornelius O’Sullivan arranged for employees to work for Fitzcon. (Bermejo Tr. 68:18-23)

**Fitzcon Parties’ Response:** Disputed and denied. Plaintiffs mischaracterize the cited testimony, which instead only states, at best, that during the period of time in and around March 2020 at the outset of the COVID-19 pandemic, Liam O’Sullivan or Cornelius O’Sullivan might in theory call Bermejo if work was available, but that they never actually did so, thereby rendering the contention mere personal conjecture. (Bermejo Tr. 68:18-70:12.) In addition, the use of the word “arranged” is vague and undefined.

24. Cornelius O’Sullivan’s nephew, Liam O’Sullivan arranged for employees to work for Fitzcon. (Bermejo Tr. 70:13-71:6)

**Fitzcon Parties’ Response:** Disputed and denied. Plaintiffs mischaracterize the cited testimony, which instead only states, at best, that during the period of time in and around March 2020 at the outset of the COVID-19 pandemic, Liam O’Sullivan told Bermejo to stop coming back to work. (Bermejo Tr. 68:18-71:7.) In addition, the use of the word “arranged” is vague and undefined.

DATED: New York, New York  
June 8, 2022

Respectfully submitted,

**COLE SCHOTZ P.C.**

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